

ASSIGNMENT AND SECURITY AGREEMENT

Agreement, dated as of September 4, 1973, between  
THRALL CAR MANUFACTURING COMPANY (the "Manufacturer") and  
CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF  
CHICAGO (the "Bank");

WHEREAS, the Manufacturer (a Delaware corporation  
therein referred to as an Illinois corporation) has entered  
into a Temporary User Agreement (the "User Agreement") dated  
as of August 15, 1973, with the Norfolk and Western Railway  
Company (the "Railroad") with respect to certain railroad  
equipment (the "Equipment"); and

WHEREAS, the Bank has agreed to furnish temporary fi-  
nancing for the Equipment under the terms and conditions hereof:

NOW, THEREFORE, the parties agree:

1. Assignment. For value received the Manufacturer  
hereby assigns, transfers, conveys and sets over to the Bank,  
as the sole property of the Bank, all of the right, title and  
interest of the Manufacturer to all of the sums payable by the  
Railroad with respect to the Equipment, including without limi-  
tation the purchase price (as such term is defined in the User  
Agreement) and interest thereon as provided in the User Agree-  
ment, without any recourse against the Manufacturer for failure  
of the Railroad to make any of the payments provided in, or  
otherwise to comply with, any of the provisions of the User  
Agreement, but with the right in and to the Collateral hereinafter

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INTERSTATE COMMERCE COMMISSION  
Filed & Recorded  
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referred to in Paragraph 2 hereof.

2. Lien and Security Interest. As Collateral security for the due performance by the Manufacturer and the Railroad of all of their respective obligations under or with respect to this Agreement, the acknowledgment of this Agreement, and the User Agreement and against loss or expense to the Bank by reason of the occurrence of any Event of Default under this Agreement and for all expenses, including court costs and reasonable attorneys fees incurred by the Bank in enforcing any obligation of the Manufacturer or of the Railroad, the Manufacturer hereby grants and conveys to the Bank a lien upon the security interest in all rights of the Manufacturer, whether now or hereafter existing, in and to the Equipment.

The Bank agrees that upon payment by the Railroad to the Bank of the purchase price of all of the Equipment under the User Agreement, together with interest thereon computed at the rate and for the time specified in the User Agreement, such lien shall forthwith cease and terminate without any further action whatsoever and upon request of the Railroad, the Bank will execute and deliver a document of release in form satisfactory for filing and recordation with the Interstate Commerce Commission and such other regulatory bodies as the Railroad may reasonably request to evidence such cessation and termination.

3. Matters Excepted From the Assignment. The right of the Manufacturer to construct and deliver the Equipment and the right of the Manufacturer to be indemnified as provided in paragraphs 4 and 7 of the User Agreement if and to the extent the Manufacturer incurs liabilities to which any such indemnity applies are excepted from the Assignment, it being understood however that the Bank shall be entitled to the protection afforded by any such indemnity.

4. Representations and Warranties of the Manufacturer.

The Manufacturer represents and warrants to the Bank:

- (a) The Manufacturer is a corporation duly existing and in good standing under the laws of Delaware and has full power and authority to execute, deliver and perform its obligations under the User Agreement and this Agreement; the User Agreement and this Agreement are not in conflict with any agreements binding upon the Manufacturer or with any provisions of law or of the charter or by-laws of the Manufacturer and the User Agreement and this Agreement are the valid and binding obligations of the Manufacturer, fully enforceable in accordance with their respective terms.

- (b) The Manufacturer is the lawful owner of all the rights in and title to the Equipment under the User Agreement; has sole right and title to the payments to be made under the User Agreement free from all liens and encumbrances and good and lawful right to sell and assign all such sums; and there are no defenses, setoffs, counterclaims, recoupments or abatement which exist, have been asserted or may be validly asserted by or in the right of the Railroad against the obligation of the Railroad to make such payments to the Bank.
- (c) The original of the Manufacturer's counterpart of the User Agreement has been delivered to the Bank and all other Manufacturer's counterparts of the User Agreement representing any interest of the Manufacturer have been marked to show that the original Manufacturer's counterpart has been so delivered to the Bank; the User Agreement has been duly filed and recorded as required by paragraph 11 of the User Agreement and the User Agreement is presently in full force and effect.

5. Covenants and Agreements of the Manufacturer.

The Manufacturer covenants and agrees with the Bank that:

- (a) The Manufacturer will duly keep and perform each and every obligation of the Manufacturer to the Railroad by reason of the User Agreement.
- (b) The Manufacturer will duly enforce the provisions of the User Agreement in accordance with its terms and will not agree to or permit any change, amendment, waiver, settlement, adjustment, cancellation or termination of the User Agreement without in each case the prior written consent of the Bank.
- (c) The Manufacturer will not sell, transfer, lease or otherwise dispose of and will not create or permit to exist any mortgage, pledge, other other encumbrance or security interest in or upon the rights of the Manufacturer in the Equipment, the User Agreement or any payments provided thereby except (i) to the Railroad in accordance with the terms of the User Agreement or (ii) to the Bank as provided in this Agreement.

(d) If, despite the terms of this Agreement, the Manufacturer shall receive any payment assigned by this Agreement to the Bank, the Manufacturer will forthwith transmit the same to the Bank.

(e) The Manufacturer will execute and deliver such documents of further assignment or assurance as the Bank may from time to time reasonably request to carry out the intent hereof and more perfectly to confirm the right, title and interest of the Bank in and to the sums payable by the Railroad with respect to the Equipment and to all the sums under the User Agreement and with respect to the security interest herein provided.

6. Payments to the Manufacturer by the Bank. From time to time at the request of the Manufacturer and subject to all of the terms and conditions of this Agreement, including performance by the Manufacturer of each of the following conditions precedent, the Bank will pay to the Manufacturer as and when a particular group of 25 units of Equipment (except that the last group may be a different number) is actually delivered and accepted by the Railroad under the User Agreement an amount

equal to the purchase price (as such term is defined in the User Agreement) of such group of Equipment so delivered, provided that all such payments shall not in the aggregate exceed \$3,700,000 and provided further that no payments by the Bank shall be required to be made after December 31, 1973.

(a) In connection with the first payment by the Bank, the Manufacturer shall cause the following dated the date of such first payment and addressed to the Bank to be executed and delivered to the Bank:

1. Evidence that the User Agreement and this Agreement (i) have been duly filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and (ii) have been duly deposited with the Registrar General of Canada and duly filed with the Companies Division of Consumer and Commercial Relations, Ontario, Canada.
2. Evidence that a financing statement covering this Agreement has been duly filed with the Secretary of State of Illinois under the Uniform Commercial Code.

3. Copies, duly certified, of resolutions of the Manufacturer's Board of Directors authorizing the transactions contemplated hereby.
4. An Incumbency and Signature Certificate as to the Manufacturer.
5. A favorable opinion of the Manufacturer's counsel covering, among other matters, (i) due authorization, execution and delivery of the User Agreement and this Agreement and that such actions are not in conflict with any provision of law or of the charter or by-laws of the Manufacturer nor in conflict with any agreement binding upon the Manufacturer of which such counsel has knowledge, (ii) the actions enumerated in subclause (i) above either do not require approval by the Interstate Commerce Commission or any other regulatory authority or that any such requisite approval or approvals of such regulatory authority or authorities have been duly obtained, and



(iii) the User Agreement and this Agreement, including the assignment and security interest provided by this Agreement are the legal and binding obligations of the Manufacturer, fully enforceable in accordance with their respective terms. In rendering such opinion such counsel may rely as to the due authorization of the Railroad upon the opinion of the Railroad's counsel.

6. A certified copy of resolutions of the Board of Directors of the Railroad authorizing the User Agreement and the acknowledgment of this Agreement.
7. An Incumbency and Signature Certificate as to the Railroad.
8. The favorable opinion of the Railroad's counsel covering, among other things, (i) due authorization, execution and delivery of the User Agreement and the acknowledgment of this Agreement that such actions are not in conflict with any provision of law or of the charter

or by-laws of the Railroad nor in conflict with any agreement binding upon the Railroad of which such counsel has knowledge, (ii) the actions enumerated in subclause (i) above do not require approval by the Interstate Commerce Commission or any other regulatory authority or that any such requisite approval or approvals of such regulatory authority or authorities have been duly obtained, and (iii) the User Agreement and the obligations of the Railroad to make payments to the Bank by reason of the acknowledgment by the Railroad of this Agreement and the provisions of the User Agreement are the legal and binding obligations of the Railroad, fully enforceable in accordance with their respective terms.

(b) In connection with the first and all subsequent payments by the Bank, the Manufacturer shall cause the following to be delivered to the Bank:

1. An original Certificate of Acceptance in the form set forth in Schedule C to the User Agreement

duly executed and delivered by the Railroad showing delivery by the Manufacturer and acceptance by the Railroad of the Equipment for which payment is to be made.

2. An invoice for the price of the Equipment, computed in accordance with Schedule A to the User Agreement, acknowledged to be correct by the Railroad, and with acknowledgment by the Railroad that its obligation to make such payment to the Bank, together with interest thereon computed at the rate and for the time specified in the User Agreement, survives any termination of the User Agreement.
3. Evidence that all taxes and other charges have been paid or that the transaction is exempt from all taxes and that there are no other charges to be paid.
4. A written request for such payment by the Manufacturer and a certificate dated the date of such requested payment by an officer of the Manufacturer that there is no Event of Default under

the User Agreement and no event which with the lapse of time or notice or both might mature into an Event of Default thereunder or hereunder.

7. Events of Default. Each of the following events shall be an Event of Default under this Agreement:

- (a) The Manufacturer shall fail to perform any of its obligations under this Agreement (including its obligations to the Railroad under the User Agreement).
- (b) Any representation or warranty of the Manufacturer made to the Bank under or with respect to this Agreement or the transactions contemplated by this Agreement shall prove to be untrue in any material respect.
- (c) The Manufacturer or any subsidiary of the Manufacturer shall become insolvent or admit in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment of a trustee or receiver for the Manufacturer or any such subsidiary or

any property thereof; or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for the Manufacturer or any such subsidiary or for a substantial part of the property of any thereof and is not discharged within 30 days; or any bankruptcy, reorganization, debt arrangement, or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against the Manufacturer or any such subsidiary, and if instituted against the Manufacturer or any such subsidiary is consented to or acquiesced in by the Manufacturer or any such subsidiary or remains for 30 days undismised.

- (d) The Railroad shall fail to perform any of its obligations under the User Agreement, including its obligation to make any of the payments of the purchase price or of interest or of any other sums.

(e) The Railroad shall not be a corporation duly existing and in good standing under the laws of Virginia; or shall not have full power and authority to execute, deliver and perform its obligations under the User Agreement and its acknowledgment of assignment of the User Agreement; or the User Agreement or such acknowledgment of assignment of the User Agreement are in conflict with any agreements binding upon the Railroad or with any provisions of law or of the charter or by-laws of the Railroad; or the User Agreement or the acknowledgment of assignment of the User Agreement are not the valid and binding obligations of the Railroad fully enforceable in accordance with their respective terms.

(f) The Railroad shall become insolvent or admit in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment of a trustee or receiver for it or any of its property; or in the absence of such application, consent or acquiescence, a

trustee or receiver is appointed for the Railroad or for a substantial part of its property and is not discharged within 30 days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against the Railroad or is consented to or acquiesced in by the Railroad or remains for 30 days undismissed.

8. Remedies.

- (a) Upon the occurrence of an Event of Default the Bank may exercise from time to time any right and remedy available to it under applicable law with respect to any breach of warranty and with respect to the lien and security interest in the interest of the Manufacturer in the Equipment granted to the Bank by this Agreement.
- (b) If any notification of intended disposition of any of the Equipment is required by law, such notification shall be deemed as properly given if mailed at

least 5 days before such disposition,  
postage prepaid, and duly addressed by  
the Bank to the Manufacturer.

- (c) Notwithstanding any other provision of this Agreement, the Bank shall have no obligation under this Agreement to make payments to the Manufacturer for any Equipment actually delivered to and accepted by the Railroad after the occurrence of an Event of Default.

9. General.

- (a) The Bank shall not by reason of this Agreement or any of the transactions contemplated by this Agreement, be or become liable for any of the obligations of the Manufacturer under or with respect to the User Agreement.
- (b) All notices shall be in writing and if to the Manufacturer shall be addressed to the Manufacturer at P.O. Box 218, Chicago Heights, Illinois, 60411, with a copy to Carroll, Connelley, Hartigan & Hillery, One North LaSalle Street, Chicago, Illinois, 60602,



and if to the Bank to Continental Illinois National Bank and Trust Company of Chicago, attention James R. Coulter, Vice President, 231 South LaSalle Street, Chicago, Illinois, 60693, or to such different addresses as the parties may by written notice specify.

- (c) No delay on the part of the Bank in the exercise of any power or right shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise of any other power or right.
- (d) This Agreement shall be binding upon and inure to the benefit of the Manufacturer and the Bank and their respective successors and assigns.
- (e) Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent

of such prohibition or invalidity without  
invalidating the remainder of such provi-  
sion or the remaining provisions of this  
Agreement.

- (f) This Agreement has been delivered at Chicago,  
Illinois, and shall be governed by and con-  
strued in accordance with the laws of the  
State of Illinois.

IN WITNESS WHEREOF, this Agreement has been duly ex-  
ecuted as of the day and year first above written.

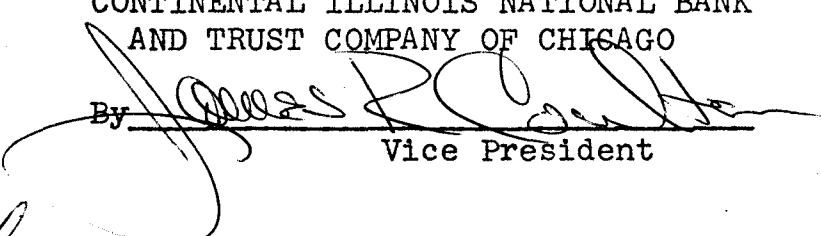
THRALL CAR MANUFACTURING COMPANY

By   
Vice President

ATTEST:

  
Secretary

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO

By   
Vice President

ATTEST:

  
Commercial Banking Officer

ACKNOWLEDGMENT BY NORFOLK AND WESTERN RAILWAY COMPANY

UNDERSIGNED, NORFOLK AND WESTERN RAILWAY COMPANY, hereby acknowledges receipt this date of a counterpart of the above and foregoing Assignment and Security Agreement dated as of September 4, 1973, between THRALL CAR MANUFACTURING COMPANY (the Manufacturer) and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (the Bank), hereby agrees that such receipt in all respect complies with the provisions of Paragraph 8 of the agreement between the Manufacturer and Undersigned (referred to in the above and foregoing agreement between the Manufacturer and the Bank as the User Agreement), and that Undersigned will pay or cause to be paid directly to the Bank at the following address:

Continental Illinois National Bank  
and Trust Company of Chicago  
Attention: James R. Coulter, Vice President  
231 South LaSalle Street  
Chicago, Illinois 60693,

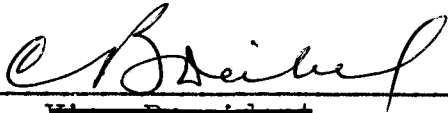
the purchase price of the Equipment and interest thereon in accordance with said Paragraph 8 of the User Agreement, and that the obligation to make such payments shall survive any termination of the User Agreement pursuant to Paragraph 2 thereof or otherwise.

Undersigned hereby agrees with the Manufacturer and the Bank to furnish to the Bank the matters necessary to comply with the conditions precedent specified as items 6, 7 and 8 of paragraph 6(a) and items 2 and 3 of paragraph 6(b) of the foregoing Assignment and Security Agreement and generally to cooperate with the Manufacturer in fulfilling the conditions precedent specified in such paragraph 6.

Undersigned further agrees in the case of the occurrence of an Event of Default under the above and foregoing Assignment and Security Agreement to cause the Equipment to be assembled at its expense at a convenient place, or places, acceptable to the Bank and to pay all costs of the Bank in the enforcement of the rights of the Bank under such Assignment and Security Agreement, including court costs, reasonable attorneys fees and legal expenses, if any.

DATED at Roanoke, Virginia, this 25<sup>th</sup> day of September, 1973.

NORFOLK AND WESTERN RAILWAY COMPANY

By   
~~William Brainerd~~

ASST. VICE PRESIDENT - FINANCE

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On this 24<sup>th</sup> day of September, 1973 before me personally appeared C. H. Threight, to me personally known, who being by me duly sworn, says that he is a Vice President of Thrall Car Manufacturing Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Terra L. Knez*  
Notary Public

My commission expires: 11/7/77

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On this 21<sup>st</sup> day of September, 1973 before me personally appeared JAMES R. COULTER, to me personally known, who being by me duly sworn, says that he is a Vice President of Continental Illinois National Bank and Trust Company of Chicago, a national banking association, that the seal affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

*Eileen Hudson*  
Notary Public

My commission expires:

MY COMMISSION EXPIRES  
DECEMBER 22, 1974